

IN The United States District Court
District of Delaware

NORMAN X Becker

v

Warden Thomas Carroll

1:07-cv-681
JJF

Case # Supreme court (DE)
1482006
Superior court (DE)
0410016765

ON appeal from the Superior Court Newcastle County
State of Delaware

opening brief

Comes now Norman X Becker, Appellant in
the above matter, before the Honorable United States
District Court, District of Delaware, praying this
Court to hear an immediate matter of serious
constitutional violations.



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Summary I

Appellant, on October 20, 2004, was arrested for two counts of first degree robbery and one count of attempted car jacking.

The events surrounding arrest — Appellant walking into a bank, no plan or disguise or weapon, scribbling a note asking for money — is indicative of Appellant's mental condition. Appellant stated he was being led by voices and he was hallucinating.

Appellant has a lifetime history of mental

illness, most recently receiving treatment at The Veterans Administration.

On January 18, 05 Appellant was given an abbreviated Mental Health exam at The Delaware Psychiatric Center and was deemed mentally capable.

Well in advance of trial - March 7 and July 13, 05 and at trial (see exhibit A and B) Appellant communicated to the trial court and attorney that he wished to plead insanity at the time of the crime

Appellant by letter and oral statement asked for a more comprehensive mental health exam accomplished by an unbiased doctor or set of doctors; Attorney stated that Money was not available for this.

Attorney and Court proceeded to trial

On September 30, 05 Appellant was found guilty of all charges.

On March 15, 06 Appellant was sentenced

to life in prison.

On October 19, 06 public Defender Bernard J. O'Donnell Filed a No Merit Brief to Delaware Supreme Court.

On December 12, 06 Delaware Supreme Court Affirmed — Case # 148,2006. This Appeal follows.

Summary II

Appellant asserts that both the Court and his attorney violated Appellant's Constitutional rights by not having Appellant further examined by a psychiatrist or psychiatrists when it became obvious the Appellant did indeed have a mental illness.

By not answering Appellant's request for pre-trial Conference to further bring to the table Appellant's mental health past and present and Appellant's desire to plead insanity, and by not allowing Appellant to bring before a jury for them to decide Appellant's mental

Competence and mental state at the time of the crime Appellant's Constitutional rights were bluntly and seriously violated.

on 2/17/05 a Delaware Psychiatric Center Psychologist, Charlotte Selig, filed a report regarding Appellant's mental health. This report included a statement by Dr. Selig that Appellant's long standing mental illness might be something "the court would consider at sentencing" - See trial transcript at 4 and Psychologists report. By this Dr. Selig admits that Appellant has some type of

mental illness (life long) and Appellant asserts that this "issue" should have been further investigated by a licensed psychiatrist before appellant went to trial.

Also Appellant's own psychiatrist at the Veterans administration was not allowed to testify, nor psychiatric records read at trial for a jury to consider.

Right to Plead insanity

In Pond v State (1827) Mart. 8 Y 143

"If upon question [sanity issue] the Judge is not satisfied, or has doubts, he may call in to his assistance the aid of a jury and submit the matter to them."

In Commonwealth v Ragone 317 Pa 113

176 A at 454 The Pennsylvania Supreme Court stated that a person admittedly insane cannot legally be tried is so sanctioned by common sense that it needs the citation of no formal authorities

Although a criminal defendant initially is presumed sane - See Government of Virgin Island v. Webbe 821 F2d 187, 189 (3rd Circuit 1987) he has the right to raise the defense of insanity. See Lynch v. Overholser, 369 U.S. 705, 713-14 82 Sct 1063, 1069 82 Sct 1063, 1069 once the defendant's sanity is challenged the burden shifts to the government to prove beyond a reasonable doubt that the defendant was sane at the time of the offense.

As To Time

when no pretrial motion deadline exists to delineate when motion [Insanity defense] is timely / untimely, rule providing for notice of insanity defense contains implicit requirement that notice of intent be filed within reasonable time. Fed Rules Cr. Proc Rule 12.2

(a) 18 U.S.C.A. Appellant gave timely notice of his intent to plead insanity, See exhibit A, B.

Errors of Court

The Supreme Court Justice Stevens held that Oklahoma law presuming defendant is competent

to stand trial unless he proves incompetence
by clear and convincing evidence violates
due process Byron Keith Cooper v Oklahoma

NO 95-5207

Appellant's due
process rights were clearly violated when
the Court on its own decision, despite
evidence to the contrary, proceeded to trial
without giving merit to Appellant's choice
to plead insanity.

Upon determination that accused's Constitutional
rights were abridged by his failure to receive
adequate hearing on his competence to stand trial,

a Writ of habeas corpus must issue
and accused must be discharged, unless
given a new trial within reasonable time

U.S.C.A. Const. Amend. 14; S.H.A. ch. 38
§§ 104-1 to 104-3

Appellant's Constitutional rights were clearly
abridged and Appellant prays the court for
him to be discharged or be given a
new trial within reasonable time.

Ineffective Assistance of Counsel

The right to Counsel is the right to

effective Counsel McMann v Richardson

90 S.Ct. 1441, 1449. "and if that
be true of men of intelligence, how much
more true of the ignorant and illiterate or
those of feeble intellect . . ." 53 S.Ct. at

63-64

The Constitution's guarantee of assistance of
Counsel cannot be satisfied by mere formal
appointment Avery v Alabama 308 U.S. 444,
446, 60 S.Ct. 321, 322.

Appellants attorney simply "went through the motions" of representing him, disregarding all indications of Appellants mental illness for a speedy disposition.

"It is not enough to assume that counsel thus precipitated into the case though there was no defense and exercised best judgment in proceeding to trial without preparation. Neither they nor the court could say what a prompt and thoroughgoing investigation might disclose as to facts. No attempt was made to investigate. Defendants were hurried

to trial. Under the circumstances disclosed we hold that defendants were not accorded the right of counsel in any substantial sense. To decide otherwise would simply be to ignore actualities" 287 U.S. at 58, 53 S.Ct at 60

close

Appellant is a "Poster child" of ineffective assistance of counsel. Counsel ignored Appellant's mental state, his lifetime history of mental illness, his substantial mental health records simply to get it over with; the trial and

his legal relationship with appellant, despite the seriousness of consequences to Appellant should he not be represented correctly.

For this Appellant prays the Court for immediate discharge or a new trial within a reasonable amount of time.

Respectfully Submitted 11 November 07

Norman X. Becker

Norman X. Becker

EXHIBIT A

Exhibit A-1

Superior Court, Newcastle County
Wilmington, Delaware

State of Delaware
VS
Norman Becker
Case# 0410016765

Subject: Pre-trial Conference

Defendant in the above matter requests a pre-trial conference, as per Superior Court Criminal Rule 17.1.

The reason for this conference is to formulate some clear strategy that the defendant can understand in Defendant's upcoming trial of August 17, 2005.

Defendant has long history of mental illness and cannot understand the full concept of his situation. This case may entail an insanity defense and this needs to be discussed with all parties involved.

For these reasons Defendant requests a pre-trial conference with his attorney and the prosecuting attorney present.

Respectfully March 7, 05

Norman X Becker

NORMAN X Becker

141903

Box 9561

Wilmington, De. 19809

*Mark A
JULY 1
Docketed 1/26*

SUPERIOR COURT CRIMINAL DOCKET
(as of 06/08/2006)

Page 1

State of Delaware v. NORMAN X BECKER
State's Atty: STEPHEN M WALther, Esq.
Defense Atty: EDMUND M HILLIS, Esq.

DOB: 06/26/1953

AKA: NORMAN BECKER
NORMAN BECKER

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	0410016765	N04110291	ROBBERY 2ND	DISM	11/30/2004
002	0410016765	IN04110292	ATT. CARJACKING	TG	09/30/2005
003	0410016765	IN04111095	ROBBERY 1ST	TG	09/30/2005
004	0410016765	IN04111096	ROBBERY 1ST	TG	09/30/2005

No.	Event	Event	Judge
1	11/05/2004	CASE ACCEPTED IN SUPERIOR COURT. ARREST DATE: 10/28/2004 PRELIMINARY HEARING DATE: 110404 BAIL: SECURED BAIL-HELD CONDITION OF BAIL NO CONTACT WITH VICTIM DIRECT OR INDIRECT DEFT. TO PARTICIPATE IN MENTAL EVALUATION PRE-TRIAL SUPERVISION CURFEW 7PM - 7AM	Oct. 20 2004 INCIDENT
2	11/15/2004	INDICTMENT, TRUE BILL FILED. NO 22 SCHEDULED FOR ARRAIGNMENT AND BAIL STATUS 11/30/04 AT 9:30 CASE REVIEW 12/27/04 AT 9:00	
3	11/17/2004	MOTION FOR REDUCTION OF BAIL FILED. BY EDMUND HILLIS, ESQ SCHED FOR 11/30 @9:30	
	11/30/2004	ARRAIGNMENT/BAIL STATUS HEARING: DEFENDANT WAIVED READING, ENTERED PLEA OF NOT GUILTY, JURY TRIAL DEMANDED. BAIL SET AT SECURED BAIL-HELD	REYNOLDS MICHAEL P. 31,500.00 100%
4	11/30/2004	MOTION FOR REDUCTION OF BAIL DENIED. \$31,500 SECURED-PRE-TRIAL SUPERVISION	REYNOLDS MICHAEL P.
5	12/01/2004	NOTICE OF SERVICE - DISCOVERY RESPONSE. FROM THE ATTORNEY GENERAL'S OFFICE.	
	12/27/2004	CASE REVIEW CALENDAR: SET FOR FINAL CASE REVIEW 1/18/05 @ 9	JURDEN JAN R.

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SUPERIOR COURT CRIMINAL DOCKET
(as of 06/08/2006)

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State of Delaware v. NORMAN X BECKER
State's Atty: STEPHEN M WALther, Esq.
Defense Atty: EDMUND M HILLIS, Esq.

DOB: 06/26/1953

AKA: NORMAN BECKER
NORMAN BECKER

No.	Event Date	Event	Judge
6	12/27/2004	CASE REVIEW CALENDAR: TO GO TO PROBLEM CALENDAR PSY ORDER SIGNED	JURDEN JAN R.
6	12/27/2004	MOTION AND ORDER, FILED AND SIGNED ON 12/27/04, BY JUDGE JURDEN. THE DEFENDANT SHALL UNDERGO A PSYCHIATRIC/PSYCHOLOGICAL EVALUATION BY THE STAFF AT DELAWARE PSYCHIATRIC CENTER.	JURDEN JAN R.
7	02/04/2005	ORDER SCHEDULING TRIAL FILED. TRIAL DATE: 05/10/05 CASE CATEGORY: #1 ASSIGNED JUDGE (CATEGORY 1 CASES ONLY): JRJ UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY FOR TRIAL. ABSENT EXCEPTIONAL CIRCUMSTANCES, RESCHEDULING OR CONTINUANCE REQUESTS WILL BE DENIED.	
8	02/09/2005	CASE REVIEW CALENDAR: SET FOR TRIAL	
9	02/17/2005	PSYCHOLOGICAL/PSYCHIATRIC REPORT FILED. SUBMITTED BY: CHARLOTTE SELIG, PSYD. COPY SENT TO COUNSEL	
15	02/28/2005	LETTER FROM COMMISSIONER VAVALA TO COUNSEL RE: 10 DAYS TO REQUEST COMPETENCY HEARING	
	03/28/2005	CASE REVIEW CALENDAR: SET FOR FINAL CASE REVIEW.	
	04/25/2005	FINAL CASE REVIEW: NO PLEA/SET FOR TRIAL 8/18/05	JURDEN JAN R.
10	04/25/2005	ORDER SCHEDULING TRIAL FILED. TRIAL DATE: 8/18/05 CASE CATEGORY: #1 ASSIGNED JUDGE (CATEGORY 1 CASES ONLY): JUDGE DEL PESCO UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY FOR TRIAL. ABSENT EXCEPTIONAL CIRCUMSTANCES, RESCHEDULING OR CONTINUANCE REQUESTS WILL BE DENIED.	JURDEN JAN R.
11	06/17/2005	ORDER SCHEDULING TRIAL FILED. TRIAL DATE: 09/29/05 CASE CATEGORY: #1 ASSIGNED JUDGE (CATEGORY 1 CASES ONLY): PLA	

SUPERIOR COURT CRIMINAL DOCKET
(as of 06/08/2006)

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State's Atty: STEPHEN M WALther, Esq.
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DOB: 06/26/1953

AKA: NORMAN BECKER
NORMAN BECKER

Event	No.	Date	Event	Judge

			UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY FOR TRIAL. ABSENT EXCEPTIONAL CIRCUMSTANCES, RESCHEDULING OR CONTINUANCE REQUESTS WILL BE DENIED.	
12		06/28/2005	DEFENDANT'S LETTER FILED. (1) <i>Request full exam re insanity plea</i>	
			TO: JUDGE ABLEMAN	
			DEFENDANT REQUEST FOR PSYCHIATRIC EVALUATION	
13		07/07/2005	REFERRAL MEMORANDUM.	
14		07/13/2005	DEFENDANT'S REQUEST FILED. (1) <i>Re insanity plea</i>	
			REQUEST FOR A PRETRIAL CONFERENCE	
			REFERRED TO COUNSEL OF RECORD.	
16		09/06/2005	SUBPOENA(S) MAILED FOR JURY TRIAL ON 09/29/05 @ 8:45 AM.	
17		09/21/2005	DEFENDANT'S LETTER FILED. (3) <i>Re insanity plea</i>	
			NOTICE THAT HE WILL BE PLEADING INSANITY AT THE TIME OF THE CRIME AT TRIAL.	
		09/29/2005	TRIAL CALENDAR- WENT TO TRIAL JURY	TOLIVER CHARLES H. IV
21		09/29/2005	SUBPOENA(S) SERVED BY SHERIFF.	
22		09/29/2005	SUBPOENA(S) SERVED BY SHERIFF.	
23		09/29/2005	SUBPOENA(S) SERVED BY SHERIFF.	
18		09/30/2005	JURY TRIAL HELD. JURY SELECTED AND SWORN 9/29/05. PRIOR TO JURY SELECTION DEFENDANT INFORMED COURT THAT HE WISHED TO PLEAD NOT GUILTY BY REASON OF INSANITY. COURT INFORMED DEFENDANT HE COULD NOT USE INSANITY PLEA AND COURT PROCEEDED WITH TRIAL. COURT WAS INFORMED BY CORRECTIONAL OFFICER HE HAD HEARD JUROR #8 SPEAKING WITH A WITNESS IN THIS CASE WHILE AT LUNCH. JUROR #8 WAS QUESTIONED AND COURT DECIDED TO REPLACE JUROR #8 WITH ALTERNATE #1. JURY FOUND DEFENDANT GUILTY OF ROBBERY 1ST (1095); GUILTY OF ROBBERY 1ST (1096) AND GUILTY OF ATT. CAR JACKING 1ST (0292) BAIL REVOKED PSI ORDERED SENTENCING DATE: 12/14/05 WITH JUDGE TOLIVER.	TOLIVER CHARLES H. IV
19		09/30/2005	CHARGE TO THE JURY FILED.	TOLIVER CHARLES H. IV
20		09/30/2005		TOLIVER CHARLES H. IV

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,

Plaintiff,

C.A. 0410016765

NORMAN X. BECKER,

Defendant.

BEFORE: HONORABLE CHARLES H. TOLIVER, IV, J.
and jury

APPEARANCES:

STEPHEN M. WALTHER, ESQ.
KARI VAN DYKE, ESQ.
DEPARTMENT OF JUSTICE
for the PlaintiffEDMUND M. HILLIS, ESQ.
OFFICE OF THE PUBLIC DEFENDER
for the DefendantTRIAL TRANSCRIPT
SEPTEMBER 29, 2005PATRICIA L. GANCI, RPR, CRR
SUPERIOR COURT OFFICIAL REPORTERS
500 N. King Street, Suite 2609, 2nd Floor
Wilmington, Delaware 19801-3725
(302) 255-0653

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Cross Examination by Mr. Hillis.....12217 September 29, 2005
18 Courtroom No. 4A
10:45 a.m.

19 PRESENT:

20 As noted.

22 THE COURT: Good morning, this is Mr. Becker.

23 Mr. Hillis told me you want to speak with me.

1 THE DEFENDANT: Pardon me?

2 THE COURT: What do you want to tell me?

3 THE DEFENDANT: Yes, sir. I do. Sir, I'd like

4 to plead not guilty by reason of insanity at the time of

5 the crime.

6 THE COURT: Okay. I think it's a little late

7 for that, Mr. Becker.

8 THE DEFENDANT: Well, in what do you say that,

9 Your Honor?

10 THE COURT: Well, I think, isn't notice

11 required certainly before the date of the trial?

12 THE DEFENDANT: I haven't seen Mr. Hillis since

13 I've been locked up.

14 MR. HILLIS: Your Honor, and he hasn't seen me

15 at the institution. He has, in fact, seen me here in

16 this building, and I've discussed with him the results

17 of the examination by the Delaware Psychiatric Center

18 which was done under my motion which the Court signed.

19 Unfortunately for Mr. Becker, his record demonstrates

20 that he is, in fact, mentally ill and he suffered from

21 some kind of mental illness apparently for a very long

22 time. I think the doctor makes reference to, perhaps,

23 going back to as long as 40 years.

2

1 ~~She~~ She actually did review some of his records

2 from the Delaware Psychiatric Center. And,

3 unfortunately, the doctor opines that his condition does

4 not, did not at the time of the offense, give rise to

5 either a finding, in her opinion, that he was not guilty

6 by reason of insanity or that he is guilty, but mentally

7 ill. She did indicate in the report that she believed

8 that his persistent and long-standing mental health

9 difficulties might be something that a Court would take

10 into consideration at sentencing. Unfortunately, if

11 he's found to be an habitual offender, that will be of

12 no moment to a Court, and the psychiatrist isn't a

13 lawyer and didn't realize that.

14 The point is this. I did, when I discussed

15 this report with Mr. Becker, indicate to him that I

16 would review the report very carefully and I would

17 consult with those in our office who possess some

18 expertise in the area. One of them being -- a couple of

19 them I talked to were ~~psy~~ forensic evaluators. And,

20 unfortunately, the ultimate legal conclusion is mine,

21 and it is this: That if I were to hire another

22 psychiatrist, No. 1, I think it's very likely that I'm

23 going to get the same opinion based on my experience in

Certificate of Service

I, NORMAN X Becker, hereby certify that I have served a true
And correct cop(ies) of the attached: OPENING brief
Federal District Court upon the following
parties/person (s):

TO: Warren Thomas Carroll
Delaware Correctional Center
Smyrna Smyrna DE 19977

TO: _____

TO: _____

TO: _____

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United
States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 11th day of November, 2007

Norman X Becker

INM: Norman Becker
SB# 141903 UNIT 23-D-L-12
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977

U.S.
A.R.I.



The United States District Court
District of Delaware
Lockbox 18
844 King St.
Wilmington, Delaware
19801

Re: JJF
1:07-cv-681

Clerk of the Court
United States District Court
District of Delaware
Re IJF 1:07-cv-681

11 November 07

Dear Clerk of Court

Please find enclosed opening brief
Regarding the above matter.

I believe the original will need
to be re-stapled

Sincerely,

Norman X Becker
DCC 1181 Paddock Rd.
Smyrna, De 19977

